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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/619,391	07/19/2000	Roman Schertler	622/40901C2	2663

7590 01/05/2005

CROWELL & MORING LLP  
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EXAMINER
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JIMENEZ, MARC QUEMUEL

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

### DETAILED ACTION

1. Receipt is acknowledged of the reply filed under 37 CFR 1.111 filed on December 2, 2004.
2. The reply is considered a *bona fide* attempt to respond to the Office letter dated November 11, 2004 (Notice of Nonresponsive Letter). However, the reply is nonresponsive. The reply fails to comply with the regulations governing the amendment of the claims in a reissue application.
3. Amendments to reissue applications are governed by 37 CFR 1.173. See 37 CFR 1.121(a), which reads in pertinent part, "*Amendments in applications, other than reissue applications.*". See also MPEP 1453.
4. The reply received on December 2, 2004 did not fully comply with the requirements set forth in the previous Notice of Nonresponsive Letter mailed on November 11, 2004. The reply received on December 2, 2004 did not fully comply with sections 5-7 of the Notice of Nonresponsive Letter mailed on November 11, 2004, these sections are repeated below.
5. Pursuant to 37 CFR 1.173(c), each amendment submitted must set forth the status of all patent claims and all added claims as of the date of the submission. The status to be set forth is whether the claim is pending or canceled. It is noted that there is no indication of the status of all of the patent claims and all added claims. Applicant should note that in place of a "marked up copy" to indicate to the examiner what changes have been made by amendment, 37 CFR 1.173(c) requires applicant to supply, **on pages separate from the pages containing the changes to the claims**, a statement of the status of all patent claims and of all added claims (pending or canceled) as of the date of the amendment and an explanation of the support in the

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disclosure of the patent for the changes made to the claims. There is no explanation of the support in the disclosure of the patent for the changes made to the claims. An amendment of a “new claim” (ie. a claim not found in the patent, that was previously presented in the reissue application) must be done by presenting the amended “new claim” containing the amendatory material, and completely underlining the claim. The presentation cannot contain any bracketing or other indication of what was in the previous version of the claim. This is because all changes in the reissue are made *vis-à-vis* the original patent, and not in comparison to the prior amendment. **Although the presentation of the amended claim does not contain any indication of what is changed from the previous version of the claim, applicant must point out what is changed in the “Remarks” portion of the amendment.** Also, per 37 CFR 1.173(c), each change made in the claim must be accompanied by an explanation of the support in the disclosure of the patent for the change.

6. The certificate filed under 37 CFR 3.73(b) is unacceptable for the following reasons:

The certificate filed October 6, 2003 is not a proper 3.73(b) certificate because the certificate filed on October 6, 2003 is not signed by someone having authority to bind the assignee. The person who signed the submission establishing ownership interest has failed to state his/her capacity to sign for the corporation or other business entity, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

The person who signed the submission establishing ownership interest is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

It is noted that MPEP 324 states that a person having a title (manager, director, administrator, general counsel) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee. A power of attorney (37 CFR 1.34(b)) from the inventors or the assignee to a patent practitioner to prosecute a patent application does not make the practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee.

An appropriate paper satisfying the requirements of 37 CFR 3.73 must be submitted in reply to this Office action. See MPEP 324, page 300-21 for an example of a proper 3.73(b) certificate.

**7. Since a new amendment is required, a supplemental declaration complying with 37 CFR 1.175(b) is also required in response to this office action.**

8. Applicant is given a ONE MONTH SHORTENED STATUTORY PERIOD, which may be extended pursuant to 37 CFR 1.136(a), in which to file an amendment which complies with the regulations governing the amendment of reissue applications.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number (571) 272-4530. The examiner can normally be reached on Monday-Friday between 5:30 a.m.-2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 273-4530. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Marc Jimenez  
Primary Examiner  
Art Unit 3726

**MJ**

December 27, 2004